S.B.Civil Second Appeal No.110/2006.

Urban Improvement Trust, Udaipur
vs.
Narayan Lal and Anr.

Date : 01.03.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr. A.K. Jain, for the appellant.
Mr. M.R. Singhvi, for the respondents.

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Heard learned counsel for the parties.

The plaintiffs filed a suit for injunction against the appellant-defendant alleging that he is in possession of the land measuring 36000 sq.fts. since 1956. The land was jagir land and plaintiffs being Mafiadar after resumption of jagir got rights in the land in dispute. The plaintiffs also claimed that they have constructed house and boundary wall enclsoing their land. It is alleged that defendant – U.I.T. threatened the plaintiffs that the UIT will dispossess the plaintiffs from the property in question.

The defendant-UIT took a plea that the land in question has been handed-over to the defendant –

appellant by the District Collector. However, the defendant admitted the possession of the plaintiffs over the land in question. It is also the case of the defendant-appellant that the land is situated near 80 fts. wide road. The trial court decreed the suit of the plaintiffs and restricted the defendant from interfering in the peace-full possession of the plaintiffs over the land in question and further restricted from demolishing the any of the construction raised by the plaintiffs.

The appellate court also upheld the finding of the trial court about the long old possession of the plaintiffs and also observed that the defendant has failed to produce any evidence to show that the plaintiffs were ever dispossessed from the land in question.

Not only this, the first appellate court took note of the fact that in decision dated 3.10.1972 in case No. 537/1971, the plaintiffs' possession was recognized and thereafter, it was further recognized in the order dated 14.5.1996 (Ex.-12). However, the first appellate court while deciding the appeal observed that in the orders Ex.-1 and Ex.-12 there is mention of 1 Bigha of land and therefore, the first appellate court held that the plaintiffs are entitled to decree for

injunction for 1 Bigha land mentioned in Ex.-1 and Ex.-12.

Learned counsel for the appellant vehemently submitted that in view of the appellate court's decree the appellant cannot take possession of the land beyond the land measuring 1 Bigha for which the appellate court has not granted decree for injunction in favour of the plaintiffs. It is also submitted that the plaintiffs are encroaching on mere land. Learned counsel for the appellant also tried to challenge the finding of the two courts on the ground that the plaintiffs have failed to prove the title of land in question.

Learned counsel for the respondents vehemently submitted that the respondents are in possession of the suit property is a admitted fact as well as is a finding of fact recorded by the two courts below. The property of the plaintiffs is surrounded by the boundary wall and therefore, there cannot be any vagueness. It is also submitted that the defendant failed to prove their any case on the basis of which they can claim possession from the plaintiffs. It is also submitted that the defendant failed to produce any document to show that plaintiffs were removed from the land in question. In view of the above, the courts

below rightly decreed the suit for injunction.

I considered the submission of learned counsel for the parties and perused the impugned judgments.

The concurrent finding of fact of the possession of the plaintiffs is based on evidence on record and it appears that the finding is not in dispute very seriously. In the facts and evidence available on record when the plaintiffs' possession is too old enough then continuity of the plaintiffs' possession can be presumed backward also. In view of the fact that the relief has been claimed for specific property which is enclosed by boundary wall then I do not find any illegality in the first appellate court's judgment and decree.

In view of the above discussion, I do not find that any substantial question of law is involved in this appeal.

Consequently, this appeal having no merit, is hereby dismissed with no order as to costs.

(PRAKASH TATIA), J.

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